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SEC

SERVICE DATE – JULY 11, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34698

BAY COLONY RAILROAD CORPORATION–
PETITION FOR DECLARATORY ORDER

Decided: July 10, 2006

On April 13, 2005, the Massachusetts Bay Transportation Authority (MBTA) filed a Notice of Termination of Operating Authority of the Bay Colony Railroad Corporation (Bay Colony). Bay Colony has been operating the 3.4-mile Millis Industrial Track between Medfield Junction (milepost 0.0) and the end of the line in Millis (milepost 3.4) in Norfolk County, MA, under a modified certificate of public convenience and necessity, issued in Finance Docket No. 29963, Bay Colony Railroad Corporation–Modified Rail Certificate, on September 24, 1987, pursuant to 49 CFR 1150.23. Bay Colony has been operating the line under a lease and operating agreement with MBTA, the owner of the line.

On May 2, 2005, Bay Colony filed a petition in Finance Docket No. 29963 to dismiss MBTA's notice. Bay Colony concurrently filed a petition for declaratory order in STB Finance Docket No. 34698, asking the Board to determine that: (1) MBTA's notice is invalid and ineffective to terminate Bay Colony's authority to operate the line; (2) Bay Colony has a regular certificate of public convenience and necessity, not a modified certificate, to operate the line; (3) MBTA can terminate Bay Colony's operating rights only by an adverse abandonment proceeding; and (4) Bay Colony is the successor in interest to, and the current holder of, an easement affording Bay Colony the right to provide freight service on the line.

Previous decisions have granted requests by the parties to hold the proceedings in abeyance to enable them to explore settlement of the issues that were raised in Bay Colony's petition. The most recent decision, served on May 11, 2006, noted that a trackage rights agreement, negotiated by the parties to govern Bay Colony's continued operations on the Millis Industrial Track, was awaiting final approval by MBTA's Board of Directors and it directed the parties to report on the status of their negotiations by July 7, 2006.

By pleading filed July 7, 2006, MBTA and Bay Colony report that they have reached a final agreement governing Bay Colony's operations over the Millis Industrial Track. Bay Colony, with the assent of MBTA, has also filed a Stipulation of Dismissal of its Petition for Declaratory Order in STB Finance Docket No. 34698. The parties anticipate that appropriate

notices of exemption concerning Bay Colony's operations on the Millis Industrial Track will be filed in the near future.

Good cause exists for granting Bay Colony's request to dismiss its petition for declaratory order in STB Finance Docket No. 34698. Accordingly, Bay Colony's petition for declaratory order will be dismissed.

It is ordered:

1. Bay Colony's request to dismiss its petition for declaratory order in STB Finance Docket No. 34698 is granted and that petition is dismissed.
2. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary